Estate Planning for Second Marriages

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Protecting Your Children's Inheritance

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If you have kids and you're getting ready to say "I do" for the second time, it's also time to rethink how your assets will be apportioned in the event of your death.

Many married individuals provide in their wills for all their assets to pass to the spouse -- with the understanding that the survivor will help provide for the couple's children in life and pass remaining assets to them at death. But in a second marriage -- with possible uncertainty about the future relationship of your spouse and your children -- you may want to separately earmark money for your children and your spouse. The situation gets more complicated if you both have children and you also contemplate more together.

To avoid family squabbles, possible estate-shrinking legal bills and to have your say regarding who gets what when you die, "you will definitely need an estate plan," says Steven Tarta, an estate-planning attorney in Ridgewood, N.J.

For some people, a simple will will suffice. Others should consider more extensive plans involving one or more trusts.

Outside of your will, you can also direct assets at your death by holding property jointly or by naming individuals as beneficiaries of retirement accounts and life-insurance policies.

Planning for Minors

One challenge is how to structure a gift to benefit a young child -- say, one who is currently only five. Almost all states have laws that allow you to name a custodian to manage property you leave to a minor. That person oversees the account until the child reaches a set age -- 18 to 25, depending on state law -- at which point he or she is entitled to the money.

If you leave money directly to a minor child in your will, you would also name the person you want to serve as custodian. That could be the same person or someone different than a guardian you want to raise the child.

But particularly if you have a fairly large sum of money in mind, many estate professionals suggest that you pass assets to a minor child via a trust that would be established at your death under the terms of your will.

The advantage of a trust: "You control the terms," says Jeffrey Skatoff, an estate-planning attorney in Boca Raton, Fla. Typical trust language would provide for the money to be used to support the child's health, education and general maintenance.

Rather than assume the child will be "financially mature" at 18 or 21, Mr. Skatoff notes that trusts can be designed to distribute assets at older ages or in installments. For instance, the beneficiary might receive one-third of the trust balance at age 25, half of what's left when he or she turns 30 and the rest at 35.

You'll need to designate a trustee -- such as a trusted family member or friend or a financial institution -- to manage and distribute assets in the trust.

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What if you want to leave an inheritance for your child but don't have a lot of current assets? An easy and affordable answer for young parents can be to buy a life-insurance policy specifically for estate-planning purposes.

"Life insurance will help make up the difference" between the assets you have now and what you might like to leave to the child, says Lawrence Davidow, an elder-law and estate-planning attorney in Islandia, N.Y.

A 35-year-old woman can purchase a 20-year term-insurance policy with a $250,000 death benefit for about $12 a month, according to QuickQuote.com. You could name as the policy beneficiary a trusted adult serving as custodian for your minor child.

But to better control the policy's distribution, "leave the life insurance policy to a trust for the child" that you create in your will, suggests Judy Sterling, an estate-planning attorney in Honolulu.

In Later Years

There can be very different considerations if you are marrying later in life and already have substantial assets. One challenge can be using those assets to ensure that a surviving spouse is financially secure in his or her lifetime while also preserving a sizable sum for children from your first marriage.

Many people in this situation opt for a Qualified Terminable Interest in Property trust. This so-called QTIP trust typically gives the spouse income produced by the assets in the trust and may provide that the remainder at the spouse's death goes to the children from the previous marriage.

Other Considerations

Note that there are other estate-planning considerations and strategies if you and your spouse have sufficient assets to trigger federal estate tax or state inheritance taxes. A variety of other trusts, for example, may make sense, and professional advice is essential.

The federal estate tax, which is as much as 45% through 2009, kicks in if your estate is worth more than $2 million -- $3.5 million in 2009. The estate tax is scheduled to disappear for 2010 and reappear in 2011 with a $1 million threshold and a 55% rate. Some state levies apply at lower asset levels.

Few people look to completely eliminate a spouse as an heir. And as a matter of law, that isn't possible in most states. Disinherited spouses can challenge the decedent's will and possibly receive an "elective share" of his or her assets, usually one half or a third of a person's estate, says New Jersey attorney Mr. Tarta.

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